

United States District Court
STATE AND **DISTRICT OF** **Minnesota**

UNITED STATES OF AMERICA

v.

CRIMINAL COMPLAINT

GABRIEL VITALI MATTHIAS
F/K/A/ BENJAMIN WAYNE GILL

CASE NUMBER: 09-mj-5156 (mk)

(Name and Address of Defendant)

I, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief:

(1) on or about February 16, 2009, in the State and District of Minnesota and elsewhere, Gabriel Vitali MATTHIAS, f/k/a Benjamin Wayne Gill, did knowingly travel in interstate commerce for the purpose of engaging in illicit sexual conduct with T.B. and N.H., minors who had not attained the age of 16 years, and which conduct would be in violation of Chapter 109A of Title 18 United States Code, namely Section 2243(a), Sexual Abuse of a Minor or Ward, and Section 2244(a)(3), Abusive Sexual Contact, if the sexual acts had occurred in the territorial jurisdiction of the United States, in violation of Title 18, United States Code, Section 2423(b); and

(2) on or about April 23, 2009, in the State and District of Minnesota and elsewhere, by using facilities of and means of interstate commerce, Gabriel Vitali MATTHIAS, f/k/a Benjamin Wayne Gill, did knowingly persuade, induce, entice, and coerce T.B., a minor who had not yet attained the age of 16 years, to engage in sexual activity for which the defendant can be charged with a criminal offense, namely, criminal sexual conduct in violation of Minn. Stat. sec. 609.344(b), in violation of Title 18, United States Code, Section 2422(b).

I further state that I am a(n) FBI Special Agent and that this complaint is based on the following facts:
Official Title

See Attached Affidavit hereby incorporated by reference as if fully restated herein.

Continued on the attached sheet and made a part hereof:

Yes No

AUSA - William Otteson
Sworn to before me and subscribed in my presence,

Timothy D. Ball
Signature of Complainant

Timothy D. Ball
Special Agent
Federal Bureau of Investigation

Dec. 21, 2009
Date
Mary Kay Klein
U.S. Magistrate Judge
Name & Title of Judicial Officer

at Bemidji, MN
City and State

Mary Kay Klein
Signature of Judicial Officer

SCANNED

DEC 22 2009

U.S. DISTRICT COURT ST. PAUL

STATE OF MINNESOTA)
COUNTY OF BELTRAMI) ss. AFFIDAVIT OF TIMOTHY D. BALL

I, Timothy D. Ball, being first duly sworn under oath, depose and state as follows:

1. I am a Special Agent for the Federal Bureau of Investigation and have been so employed since February of 1997. I am currently assigned to the Bemidji, Minnesota Resident Agency (RA) of the FBI, with the responsibility of investigating violations of Federal law that occur in the Bemidji RA territory.

2. This affidavit is based on my training and experience, as well as my knowledge and that of other law enforcement officers involved in this investigation. Further, this affidavit contains information to support probable cause but is not intended to convey facts of the entire investigation.

3. This affidavit is made for the purpose of establishing probable cause in support of a federal arrest warrant and, therefore, contains only a summary of relevant facts.

4. On February 19, 2009, T.B., a minor female born in April 1994, reported to Beltrami County law enforcement officials that a 26-year-old male, whom she had met on the Internet, had on February 16 traveled from California to Minnesota to see her. T.B. and her friend, N.H., a minor female born in June 1995, agreed to meet with the male and did meet with him on February 16, 2009.

5. The male traveler was subsequently identified as Gabriel Vitali MATTHIAS, f/k/a Benjamin Wayne Gill. MATTHIAS was born in February 1982.

6. T.B. and N.H. have provided statements to law enforcement, including Your Affiant, that are summarized as follows.

a. T.B. and N.H. met MATTHIAS on the Internet sometime in 2008. They eventually began communicating primarily by telephone and text message using T.B.'s cellular phone.

b. MATTHIAS knew that T.B. was 14 years old and N.H. was 13 years old because they disclosed their ages to him.

c. T.B. and N.H. knew that MATTHIAS was 26 years old because he disclosed his age to them.

d. MATTHIAS's communications with T.B. and N.H. were of a sexual nature. MATTHIAS expressed a desire to perform sexual acts with T.B. MATTHIAS also asked T.B. to send photographs of herself to him, which T.B. did. MATTHIAS also told T.B. that she could not tell anyone about their relationship, or he would go to prison.

e. In January or February 2009, MATTHIAS informed T.B. that he was moving from California to Wisconsin and wanted to meet with her in Minnesota on his way to Wisconsin. T.B. agreed to meet with MATTHIAS. N.H. also agreed to meet with MATTHIAS.

f. On February 16, 2009, MATTHIAS picked up N.H. first, in Walker, Minnesota. He provided her with alcohol and she consumed alcohol as he drove her north to Bemidji, Minnesota.

g. Once in Bemidji, MATTHIAS and N.H. went to the Super 8 Motel, where Matthias had already rented a room and checked in. They entered through a rear door entrance.

h. Once in MATTHIAS's hotel room, MATTHIAS began taking N.H.'s clothes off. N.H. had been drinking and was scared to say no. MATTHIAS used his fingers to digitally penetrate N.H.'s vagina. N.H. also touched MATTHIAS's penis with her hand.

i. After MATTHIAS engaged in the above sexual acts with N.H., the two of them dressed and MATTHIAS drove with N.H. to T.B.'s house, north of Bemidji. T.B. snuck out of her house and got in the car with MATTHIAS and N.H. The three of them drove back to the Super 8 Motel in Bemidji. MATTHIAS supplied T.B. and N.H. with alcohol as they drove.

j. The three of them attempted to enter the motel from the rear door entrance but, due to the presence of a motel security guard, T.B. and N.H. walked to a nearby store where MATTHIAS picked them up.

k. MATTHIAS drove N.H. and T.B. to Walker, where N.H. was staying, and dropped N.H. off. MATTHIAS then began driving back north toward Bemidji with T.B.

1. During the return drive, MATTHIAS fondled T.B.'s breasts, inside her bra, skin on skin, for about 10 minutes while driving.

7. On April 24, 2009, T.B. reported to Beltrami County law enforcement officers that she had received multiple text messages from MATTHIAS on the evening of April 23, 2009. In the messages, MATTHIAS proposed to visit T.B. and engage in additional sexual acts.

8. T.B. provided the messages to law enforcement, which are listed in relevant part below, with MATTHIAS's messages in bold:

6:50 p.m. **Would you maybe indulge me if I come visit?**

6:50 p.m. No it's okay we can gotta tell me so I know when and where K.

. . .

6:54 p.m. **Like a BJ is all I would want I guess I'd like to take your anal virginity if you could see that happening with me**

6:55 p.m. U M no T Y.

. . .

6:56 p.m. **I'll pay you get some extra money from taxes**

6:57 p.m. **I'm not a whore I'm 15 I don't want to do that**

6:58 p.m. **I know you're not I'm just trying to make it worth it to see you since you'll get no pleasure just from helping me out (frown face)**

6:59 p.m. No I'm good

7:00 p.m. Okay is there anyway you'd at least be able to watch me jerk it?

7:01 p.m. No

7:02 p.m. Well NVM then. I'm not gonna waste my money on gas and hotel room if nothing's going to happen

7:04 p.m. Okay then don't see me fine with me

7:06 p.m. Sorry it's a lot of money to spend for just hanging out especially since you'd probably make me buy alcohol too LOL

....

7:11 p.m. Oh and by watching me jack it I didn't necessarily mean in person I do have a webcam

7:13 p.m. Yeah? so...

7:14 p.m. So I wouldn't mind jacking off in front of you from time to time you never did get to see it in action

7:15 p.m. I'm good on that

9. On or about May 1, 2009, MATTHIAS was located and arrested in Madison, Wisconsin and extradited to Minnesota.

10. Following his arrest, MATTHIAS provided a statement to law enforcement after being advised of and waiving his Miranda rights. In the statement, MATTHIAS admitted that he traveled to Bemidji in February to see T.B.; further admitted that he touched T.B.'s breasts inside her bra; and further admitted knowing that T.B. was underage.

11. MATTHIAS also admitted that while in Bemidji in February he engaged in sexual acts with N.H.; further admitted that he performed oral sex on N.H.'s vagina with his mouth and penetrated her vagina with his fingers; further admitted that N.H. touched MATTHIAS's penis with her hand; and further admitted knowing that N.H. might be underage.

12. MATTHIAS's cellular telephone was seized and examined pursuant to a State of Minnesota search warrant. Sexually suggestive photographs of T.B., dated February 12, 13, 14, and 15, 2009, were found saved on MATTHIAS's cellular telephone.

13. MATTHIAS's cellular telephone number bears a 541 area code, which Your Affiant knows to be an area code from the State of Oregon.

14. T.B.'s cellular telephone number bears a 218 area code, which Your Affiant knows to be an area code from the northern part of the State of Minnesota.

15. Based upon the facts conveyed in this affidavit, Your Affiant submits there is probable cause to believe that, on or about February 16, 2009, in the State and District of Minnesota and elsewhere, Gabriel Vitali MATTHIAS, f/k/a Benjamin Wayne Gill, did knowingly travel in interstate commerce for the purpose of engaging in illicit sexual conduct with T.B. and N.H., minors who had not attained the age of 16 years, and which conduct would be in violation of Chapter 109A of Title 18 United States Code, namely

Section 2243(a), Sexual Abuse of a Minor or Ward, and Section 2244(a)(3), Abusive Sexual Contact, if the sexual acts had occurred in the territorial jurisdiction of the United States, all in violation of Title 18, United States Code, Section 2423(b).

16. Further, there is probable cause to believe that, on or about April 23, 2009, in the State and District of Minnesota and elsewhere, by using facilities of and means of interstate commerce, Gabriel Vitali MATTHIAS, f/k/a Benjamin Wayne Gill, did knowingly persuade, induce, entice, and coerce T.B., a minor who had not yet attained the age of 16 years, to engage in sexual activity for which the defendant can be charged with a criminal offense, namely, criminal sexual conduct in violation of Minn. Stat. sec. 609.344(b), all in violation of Title 18, United States Code, Section 2422(b).

Further Your Affiant sayeth not.

Timothy D. Ball
Timothy D. Ball
Special Agent, FBI

Subscribed and sworn to before
me this 21st day of December, 2009.

Mary Kay Klein
Hon. Mary Kay Klein
U.S. Magistrate Judge